IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

H.C.P.No.370 of 2007

R.Sundararaj .. Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by the Secretary to Govt.
   Public (SC) Department
   Fort St.George
   Chennai 600 009.

2. The Union of India
   rep. by the Secretary to Govt.
   Ministry of Finance
   Department of Revenue(COFEPOSA Unit)
   New Delhi.

3. The Superintendent of Central Prison
   Central Prison, Madurai. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for a writ of Habeas Corpus calling for the records relating to the detention order in G.O.No. SR.1/1043.6/2006 dated 15.12.2006 passed by the first respondent herein and quash the same and direct the respondents to produce the body of the person of detenu namely R. Sundararaj, Son of Ramalingan, before this Hon'ble Court now detained under Sec.3(i) (ii) of the COFEPOSA ACT in the Central Prison, Madurai, and set him liberty.

For Petitioner : Mr.M.M.K.Alifudeen
For Respondents 1&3 : Mr.N.R.Elango
Additional Public Prosecutor
For Respondent 2 : Mr.Y.Bhuvaneshkumar, SCGSC

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O R D E R

(Order made by P.D.DINAKARAN,J.)

The challenge is to the order passed against the petitioner dated 15.12.2006 by the first respondent directing the preventive detention of the petitioner under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2.1. A short background would be not out of place. Based on specific information to the effect that one container No.GATU 038402-9 (20 feet) was stuffed with rice for export at Inland Container Depot, Irugur and in the enroute, the rice was unloaded from the container near Dindigul by tampering the rivet of the keel, red sanders were stuffed and the container reached Tuticorin Port (PSA SICAL Container Terminal) in the name of one exporters M/s.Good Mark Enterprises, the officers of SIIB, Custom House, Tuticorin detained the container on 27.10.2006 at 1830 hours. The container was examined and was found fully stuffed with reddish brown coloured wooden logs of various sizes, against the declared cargo "Rice". On the reasonable belief that Red Sanders, a prohibited item for export under the Foreign Trade Policy were attempted to be exported illicitly in violation of the Customs Act read with the Foreign Trade Policy, the red sanders were seized under Customs Act, 1962 and the value of the seized goods was estimated at Rs.27 Lakhs approximately.

2.2. The statements of the detenu given before the Customs Officials under Section 108 of the Customs Act were recorded wherein he confessed his involvement and complicity in the offence of attempting to export 12.58 Mts of Red Sanders, a prohibited item for export.

2.3. The first respondent having satisfied that the detenu has indulged in abetting the smuggling of goods and in engaging in transporting the smuggled goods, ordered his detention.

3. Mr.M.M.K.Alifudeen, learned counsel for the petitioner challenges the order of detention on two grounds:

> i. While the order of detention dated 15.12.2006 was served on the detenu on 17.12.2006, as per the list of documents furnished to the detenu, the last document was furnished by the sponsoring authority to the detaining authority only on 19.12.2006, viz., after the passing of the detention order, which shows that the detaining authority had not taken into consideration the said document dated 19.12.2006, before

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passing of the impugned order of detention; and
ii. Even though in the grounds of detention paragraph (xii) at page (9) it has been stated that the detenu was lodged in Central Prison, Madurai, in the intimation of the arrest addressed to the wife of the detenu, found at page 591 of the booklet, the place of lodging of the detenu is not stated.

4. We heard Mr.N.R.Elango, learned Additional Public Prosecutor appearing for respondents 1 and 3 on this point and Mr.Y.Bhuvaneshkumar, Senior Standing Counsel for the Central Government and there is no convincing reply on their behalf to meet the above point. We have also carefully perused the materials produced before us.

5. With regard to the first contention of the learned counsel for the petitioner, from a perusal of the materials produced before us, it is obvious that the last document was furnished by the sponsoring authority to the detaining authority only on 19.12.2006, viz., after the passing of the detention order dated 15.12.2006, which fact clearly shows that the detaining authority has not applied its mind to that particular document which was sent on 19.12.2006 before passing the detention order.

6. With regard to the second contention of the learned counsel for the petitioner, in Page (9) paragraph (xii) of the grounds of detention dated 15.12.2006 it is stated as under:

".. Telegrams dated 30.10.2006 were sent to your family and the family of Thiru D.Padmanaban, intimating the arrest and remand and lodging in Central Prison, Madurai.".

To substantiate the above statement, even though copy of the telegraphic intimation of the arrest was furnished, in the intimation it is stated as under:

"R.Sundararaj... was arrested on 30.10.2006 at 12.30 Hours by the Superintendent of Customs... He remanded at ACJM Court, Madurai on 30.10.2006."

7. From the above, it is clear that the wife of the detenu was not intimated as to where the detenu was remanded. We fail to understand as to how the detaining authority arrived at a finding that the detenu was lodged in Central Prison Madurai, without any material to that effect.

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8. For the reasons aforesaid, this habeas corpus petition has to be allowed. Accordingly, this petition is allowed and the detention order is quashed. The detenu is directed to be released forthwith, unless he is required in connection with any other case. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Public (SC) Department
   Fort St.George, Chennai 600 009.

2. The Secretary to Government
   Ministry of Finance
   Department of Revenue,
   New Delhi 110 001.

3. The Superintendent of Central Prison
   Central Prison, Madurai.

4. The Public Prosecutor, High Court,
   Chennai 104.

5. The Joint Secretary to Govt,
   Public (Law and Order) Department
   Fort St George, Chenai-9.

+ One cc to Mr. M.MK. Alifudeen Advocate SR 68369
AKR (co)
sg 27/11/07

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